

Appendix F: OCRM Response to Comments

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Comments received on the DEIS
OCRMs Review of Amendments
to the Alaska Coastal Management Program
from the following

Boroughs/CRSAs

Aleutians East Borough
Bering Straits Coastal Resource Service Area-
Bristol Bay Coastal Resource Service Area
Bristol Bay Borough
Cenaliulriit Coastal Resource Service Area
City/Borough of Juneau
Kenai Peninsula Borough
Lake and Peninsula Borough
North Slope Borough
Northwest Arctic Borough
City of Skagway
Yakutat Coastal District/City and Borough of Yakutat/Yakutat Tlingit Tribe

Interest Groups/Industry

Alaska Eskimo Whaling Commission
Alaska Federation of Natives, Inc.
Alaska Inter-Tribal Council
Alaska Oil and Gas Association (AOGA)
BP Exploration (Alaska) Inc.
ConocoPhillips Alaska, Inc.
Cook Inlet Keeper
Cook Inlet Regional Citizens Advisory Council
Juneau Audubon Society
Oceana
Prince William Sound Regional Citizens' Advisory Council

Elected Officials

Representative Beth Kerttula, Alaska State Legislature District 3

Federal and State Agencies, Federally-Recognized Tribes

Hoonah Indian Association
NOAA Marine Fisheries Service
U.S. Department of Interior, Minerals Management Service
U.S. Department of Interior, Office of Environmental Policy and Compliance

U.S. Environmental Protection Agency

General Public

Glenn Gray
Julie Hammonds
Sandy Harbanuk

Introduction

The Office of Ocean and Coastal Resource Management (OCRM) received 32 written comments on the Draft Environmental Impact Statement (EIS) for OCRM's Review of Amendments to the Alaska Coastal Management Program, and held public meetings in Juneau and Anchorage to provide opportunities for verbal testimony. Commenters included representatives of Cities, Boroughs and Coastal Resource Service Areas, Regional Citizens' Advisory Councils, oil industry groups, environmental groups, elected officials, Native Alaskan tribes, federal agencies, and private citizens. The comments and responses discussed below are arranged by topic, with summaries of the comments followed by the applicable responses. Comments are paraphrased where possible, and similar comments are combined in many cases to facilitate concise and consistent responses. Occasionally, commenters are identified by affiliation.

Time Frame for Conducting EIS

Comment: EPA expressed concern that the tight schedule for development of the EIS would inhibit public participation and OCRM's ability to thoughtfully consider public comments and respond to input while developing the EIS. Based on its review of the DEIS, EPA found it difficult to determine how OCRM received, evaluated, and responded to public scoping comments during the development of the DEIS. EPA also expressed concern that the time frame for closing the public comment period on the DEIS (November 7, 2005), the issuance of an FEIS on November 18, 2005, followed by a Record of Decision on December 28, 2005 (ROD), would leave very little time for OCRM to evaluate and respond to public comments on the DEIS in accordance with 40 CFR 1503.4 and produce an FEIS that considers those comments, particularly given the complexity of issues and the significant changes to the Alaska CMP that are proposed for review and comment.

Response: OCRM appreciates EPA's concern, however OCRM has been working both with the State and the affected coastal districts on this program amendment for considerably longer than the apparent time frame of the NEPA production period. In anticipation of the amendment submission, OCRM began its collection of information and analysis of the program amendment and its potential impacts in the Fall of 2004. In addition, OCRM had the benefit of "scoping" information from public meetings held by Alaska on the proposed revisions to the State's coastal program. In addition, OCRM staff spent considerable time working with the State to address issues raised by OCRM regarding CZMA requirements. OCRM believes the amendment review schedule, although expeditious, is reasonable and meets the requirements of NEPA and other applicable law. All applicable minimum time period have been provided for in the schedule. Failure to complete the review process before the State's January 1, 2006 deadline would have the same effect as a decision to deny the amendment. The relatively short schedule is therefore necessary in order for OCRM to make an informed decision, as required by NEPA, before the State's statutory provision is triggered.

Comment: NOAA should extend the comment period for various reasons, including providing an opportunity to develop a meaningful government-to-government consultation process, waiting for the State of Alaska to respond in writing to the North Slope Borough regarding how the ACMP changes will affect OCS reviews, etc.

Response: OCRM has established a time frame for conducting the NEPA review on the proposed amendments to the Alaska Coastal Management Program that will meet both the requirements of NEPA as well as the pending State legislative timeframe for sunset of the ACMP. OCRM has carefully taken into consideration all of its obligations, including consultation with the Alaskan Native groups. In addition, OCRM has been advised that the State will be providing its response to the North Slope Borough before the FEIS is issued.

Comment: If OCRM can not prepare a revised EIS addressing requests for substantial analysis revisions within the time frame “arbitrarily mandated” by the State of Alaska, or require the State to change its laws, then the State should be allowed to sunset its program, or change its laws.

Response: OCRM is determined to meet its obligations under NEPA. OCRM has provided additional analysis where it has determined that additional analysis was needed to complete the final EIS.

Comment: Various commenters support Alternative 2 as a method of providing OCRM with sufficient time to address the adverse impacts to habitat protection and local control, which they feel are not adequately addressed in the DEIS.

Response: OCRM will select its alternative based on its NEPA analysis and the requirements of the CZMA, and not as a method to gain additional time to complete that analysis.

Comment: The DEIS is deficient in failing to wait for the program to be fully described before undertaking the EIS.

Response: OCRM believes the changes to the program have been sufficiently described in order for OCRM to be able to undertake preparation of the EIS, according to CZMA requirements. Additional changes which may be made to the ACMP, such as revised district programs, will be reviewed separately as program changes in the future.

Scope and Purpose of EIS

Comment: OCRM should provide an explicit link between the scope of its NEPA analysis and the nature of this federal decision, or the proposed action, to clearly and prominently identify the purpose and the scope of the action under consideration. To accomplish this, Section I and the Executive Summary should be revised to include text from Appendix A [OCRMs preliminary approval letter to AK].

Response: OCRM agrees with the comment in general; that the proposed action under review is more accurately defined as OCRM's decision on approval, rather than review of the amendment itself; and these changes are reflected in the Executive Summary and Section I. However, this does not change the scope of OCRM's review, which is the environmental impacts associated with the three alternatives.

Comment: The scoping report discusses comments received during the scoping process, but many of the issues raised in those comments are not reflected in the DEIS.

Response: The purpose of scoping is to identify the most significant issues that will be addressed in the EIS. Federal agencies are not expected to address every issue identified during the scoping process. Section 1.4 discusses OCRM's scoping process, and provides a summary of the public comments and the key environmental issues that were raised and, consequently, received particular attention in the EIS.

Alternatives

Comment: Various interests were surprised to find that OCRM would support Alternative 1 as the preferred alternative since the EIS acknowledges it will result in environmental justice issues and impacts to subsistence uses and activities.

Response: OCRM has determined that the impacts of Alternatives 2 and 3 would result in more significant impacts to coastal districts which are largely represented by Alaskan Natives, as well as subsistence uses and activities.

Comment: Alternative 1 will not result in neutral effects on the physical environment, because less local involvement in decision-making affecting local areas will mean worse decisions for the environment. The same conclusion reached for disapproving the changes that may result from selecting Alternative 3 (i.e., may result in the "physical deterioration of natural resources" and "deterioration of the management of important coastal uses such as subsistence use") could be reached by choosing Alternative 1, approval of the changes.

Response: This is not a conclusion reached by OCRM in the EIS. OCRM does not make any specific links between less local involvement in decision-making and neutral effects on the physical environment. OCRM selected the preferred alternative because the State has met the requirements of the CZMA, and the preferred alternative is the most likely to result in the fewest significant impacts on the human environment.

Comment: OCRM should consider one or more additional reasonable alternatives that include partial approval and/or modifications or to the ACMP, e.g., restoration of local control, a stronger district role, better habitat protection, etc.

Response: OCRM is not considering a partial approval. Under the CZMA, a State determines how much authority it wants to give to local governments. CZMA section 306(d)(11). OCRM has no authority to dictate to a State that it must provide for greater

local authority. A State meets the program approval requirements in CZMA section 306(d), either by State authority only, or through some combination of State and local authority that the State determines. OCRM has preliminarily determined that Alaska has met the requirements of CZMA section 306(d), including habitat. Moreover, even if OCRM considered a partial approval, it is likely Alaska's sunset provisions would still apply.

Comment: EPA raised specific concerns regarding NEPA requirements for considering additional alternatives: “EPA understands that OCRM's options and processes are constrained by the time limits imposed by State law. However, the result is a constrained NEPA process that curtails the ability to consider a full range of reasonable alternatives that would potentially be of greatest benefit to the program. The State of Alaska's proposed program amendment under review by OCRM includes a complex variety of proposed changes to the ACMP, which have occurred over the past few years. Additional alternatives could be developed by looking at and analyzing the proposed changes, alone and in combination, focusing on specific demonstrated weaknesses, redundancies, or vagaries in the existing program that should be changed while retaining the strengths and benefits of current enforceable local CMP policies. Analysis of a wider range of alternatives would allow coastal districts and communities and the decision maker to determine how State and federal laws and regulations, statewide standards, and guidelines could provide adequate protection of environmental, cultural, and subsistence resources in the absence or reduction of enforceable coastal district policies.”

Response: OCRM's decision to consider three alternatives was not determined in any way by the time limits imposed by State law. OCRM believes it has considered a reasonable range of alternatives. The EIS considers the effects of approval and implementation of the amended ACMP, of denial of the proposed amendment, and of no action. Because of the State's statutory sunset clause, the result of both denial and no action is the continuance of the current ACMP for approximately five month after the State's January 1, 2006 deadline for OCRM approval of the proposed amendment, followed by the repeal of the ACMP. Under the CZMA, OCRM can only approve or deny proposed amendments, depending on whether the requirements of the CZMA are satisfied. OCRM has already determined preliminarily that the proposed amendment is likely to satisfy the requirements of the CZMA. There are, of course, any number of policy choices the State can make in designing the ACMP. Indeed, the proposed amendment is before OCRM now precisely because the State made a deliberate policy choice to amend the ACMP. OCRM does not have the authority to dictate policy to states by partially or conditionally approving proposed amendments that meet the requirements of the CZMA, nor does OCRM have the authority to amend the requirements of the CZMA. An agency may consider alternatives that are not within the agency's jurisdiction (indeed, the no action alternative would not comply with OCRM's responsibilities under the CZMA), but it is not required to, except if necessary to ensure a reasonable range of alternatives is considered. As explained above, OCRM believes that a reasonable range of alternatives was considered, and that it is not necessary to consider additional alternatives that would require amendment of State or federal law.

Comment: The DEIS does not provide an adequate basis for OCRM's justification of its preferred alternative that the most likely result of disapproving the ACMP changes would be the repeal of the ACMP. Rather, it could be argued that it is most likely that if OCRM were to disapprove some of the proposed changes, the State Legislature would respond with legislation before the sunset date of May 20, 2006.

Response: Please see above response regarding partial approval. It is speculative to surmise whether that the Alaska Legislature would respond with legislation revising parts of the ACMP requirements. OCRM can not complete its EIS analysis based on speculative actions that the Alaska Legislature may or may not take in the future.

Comment: While the EIS portends to evaluate the environmental consequences for three alternatives, it really only evaluates two alternatives, since Alternatives 2 and 3 would have the same effect. Therefore, the DEIS fails to "rigorously explore and objectively evaluate all reasonable alternatives."

Response: It is beyond OCRM's control that due to Alaska State law, Alternatives 2 and 3 would result in the same effect, and therefore the analysis was combined. As mentioned in the response above, it is beyond OCRM's purview to partially approve a program change if that change meets the requirements of the CZMA.

Adequacy of the Analysis

Comment: Several sections of the DEIS emphasize that OCRM had no choice but to approve the ACMP changes or the program would sunset. This is contrary to NEPA regulations that require an adequate analysis of impacts rather than justifying decisions already made.

Response: OCRM disagrees with this characterization of the EIS. OCRM's analysis compares the three alternatives available, which include two that would result in the sunset of the ACMP and its impacts. Its preferred alternative is to approve the ACMP, based on fewer significant impacts associated with this alternative.

Comment: The DEIS has failed to take the requisite "hard look" required by NEPA at impacts to the human environment.

Response: OCRM disagrees with this characterization of the EIS. In general, OCRM found that there are far fewer impacts associated with the change than have generally been asserted due to the shift in balance between State and local implementation of the State's coastal management program.

Comment: The DEIS should include a more thorough analysis of conflicting, inconsistent, unclear, incomplete, and inaccurate information in the amendment.

Response: The purpose of the EIS is to analyze the impacts of its decision on approving the proposed changes as part of the ACMP, not to analyze "inconsistent, unclear,

incomplete, and inaccurate information. OCRM worked with the State over a period of several months on submitting a program change package that was not conflicting, inconsistent, unclear, incomplete, nor inaccurate.

Comment: The DEIS does not describe the methods used by OCRM to analyze the potential effects of changes.

Response: Additional information has been added to Section 7.2, Criteria for Evaluating the Effects of Approving or Denying Amendments to the ACMP, to describe the methods used by OCRM to analyze the potential effects of changes.

Comment: The DEIS justifies a lack of analysis by stating that the effects of the changes “are difficult to analyze because they are secondary and dependent on separate, future, discretionary actions by a variety of entities.”

Response: OCRM disagrees with the characterization of its statement as a “justification for a lack of analysis.” This statement was made as the basic premise for the level of analysis that we consider possible based on the type of federal action being evaluated. OCRM is required to determine whether or not it should approve changes to Alaska’s coastal management program. The State has provided OCRM with a set of amendments that will result in a shift in program implementation balance from a more locally-based approach to a more centrally-based approach. Their proposal is to re-absorb delegation of certain authorities, in many cases without substantive changes to those authorities themselves. OCRM has provided analyses of impacts where there have been changes to the authorities, and of the shift in balance. Whether or not implementation of unrevised standards and laws will result in negative effects is not immediately foreseeable by OCRM. In many coastal states, state-based programs that do not rely on a local component are fully functional. OCRM’s statement was simply intended to establish a baseline for starting its analysis.

Comment: Rather than complete its own analysis, OCRM relies on statements made in the Amendment request.

Response: OCRM disagrees with this characterization of the EIS analysis. OCRM relied on information provided by several sources to conduct its analyses, including the State, as well as comments received from the districts, other federal agencies, various interest groups and research.

Comment: OCRM’s DEIS lacks sufficient detail to comprise an adequate analysis under NEPA, and does not evaluate reasonably foreseeable significant environmental consequences, provide a summary of existing relevant and credible scientific evidence; and an evaluations of adverse impacts based on generally accepted scientific approaches or research methods. Instead, OCRM has “assembled an extensive report on the existing environment in Alaska without performing meaningful analysis, especially of subsistence resources, reduced habitat protection, and the potential adverse socio-economic impacts.

Response: See Sections 7.4.6 (Subsistence) and 7.4.7 (Resources and Habitats), and Section 8 (Environmental Justice) for OCRM's analysis of impacts for subsistence habitat resources. OCRM believes that based on the extent of the proposed changes, it has provided sufficient analysis and identified the potential adverse socio-economic impacts associated with the proposed federal action.

Comment: NOAA's impacts analysis of various alternatives is fundamentally flawed because NOAA repeatedly compares Alaska's new CMP with its old program, "as if the old program was still a viable option." The commenter disagrees with some of OCRM's negative findings, (e.g., subsistence resources, Section 7.4.6), and states that Alaska's old program should not be used as a basis of comparison.

Response: OCRM disagrees that the analysis of the various alternatives is fundamentally flawed because of the use of the current ACMP as a basis for comparison. Even though Alaska's current ACMP is scheduled to sunset under State law, it is nonetheless a useful basis for comparison because it is the status quo with which reviewers are most familiar.

Comment: NOAA should evaluate Alaska's new CMP on its own merits, as if Alaska were submitting its program for the first time. For example, NOAA should analyze whether the new subsistence policies will have an overall positive or negative effect on subsistence uses and resources of the coastal zone.

Response: Alaska has not submitted a new CMP to NOAA for approval; therefore it would not be appropriate to evaluate the program amendment "as if Alaska were submitting its program for the first time." Pursuant to OCRM regulations (15 C.F.R. part 923, Subpart H), when an amendment is submitted, OCRM must review the request to determine if the federally-approved CMP, as changed by the amendment request, will still constitute an approvable program. In the case of Alaska, OCRM made preliminary Findings of Approvability. In accordance with the amendment procedures, NOAA must then assess the environmental impacts of the proposed amendment in order to satisfy the requirements of NEPA.

Comment: The DEIS should address the effect of more unchecked coastal development and more industry operating in Alaska, since OCRM appears to justify its approval in the assertion that an expedited permitting process will attract industry to the State.

Response: OCRM disagrees with the characterization of this comment; that the effect of approval of the revisions to the ACMP will be "unchecked coastal development" and that OCRM is "justifying" its approval through the assertion that an expedited permitting process will attract industry to the State. It is OCRM's position that the effects of the changes will be primarily neutral due to the fundamental nature of the change—replacing combined state-local oversight to a focus on state oversight, and clarifying and establishing compliance measures for some of the State standards. Inasmuch as the State's primary purpose for making these changes was to streamline its permitting process (which is its primary function), OCRM recognizes these as positive effects to the human environment in the EIS. There is no indication that these changes will result in

“unchecked coastal development” in Alaska. In addition, any new development will be held to coastal standards that have met the requirements of the CZMA, which the State’s amendments must do in order to be incorporated into the ACMP.

Comment: The analysis should include a comparison of Alaska’s environmental laws to that of other coastal states to determine the importance of the ACMP in Alaska.

Response: OCRM believes that Alaska’s environmental laws are extremely important to the State, and does not believe this type of analysis is either relevant or necessary to understanding the various alternatives proposed in the EIS.

Comment: It is not appropriate that the EIS analysis includes a review of the effects of the amended ACMP on the State’s permitting process when in fact, the purpose of the NEPA analysis is to assess the impacts to the quality of the human environment. OCRM appears to have misunderstood the requirements of NEPA: that OCRM analyze the effects of changes to the State’s permitting process on coastal resources and uses, including subsistence and habitat.

Response: OCRM believes it has complied with the requirements NEPA in the development of the EIS, and has analyzed the effects of changes to the ACMP on coastal resources and uses, including subsistence and habitat. However, another effect that is a result of the changes to the ACMP is that the permitting process itself will be improved. This is considered a socio-economic impact, which is also a valid consideration under NEPA.

Federal Consistency Analysis

Comment: Changes to the consistency review process (e.g., scope of project, categorically consistent and generally consistent activities, phasing, time limitation, and shallow gas exemption) are not adequately analyzed in the DEIS.

Response: Please see Section 7.3 for OCRM’s analysis of changes to the consistency review process. See Section 7.6 regarding the discussion of effects of shallow natural gas exploration and development. OCRM considers these analyses to be adequate for the purposes of determining effects of the changes.

Comment: One commenter provided examples where they feel the State has been unclear on changes to the scope of consistency reviews under the proposed changes, primarily with respect to federal permits and “removal” of the DEC from consistency review requirements. They disagree with OCRM’s findings that the scope of projects subject to federal consistency will not change, or may improve by becoming clearer and more predictable, and state that the analysis does not adequately address the environmental effects of limitations to the scope of review from these other changes.

Response: OCRM believes the effects of the changes to the ACMP’s consistency process have been adequately considered in the Effects Analysis of the EIS.

Comment: The DEIS fails to find that coal bed methane projects have been routinely reviewed for ACMP consistency.

Response: As explained in Section 7.6.1.4, prior to HB 69, shallow natural gas projects were subject to review for State or federal consistency with the enforceable policies of the ACMP, and other resource agency regulations. However, it is difficult to determine whether any projects fitting under the HB 69 criteria for shallow natural gas projects were reviewed for consistency. Nonetheless, Section 7.6.1.4 considers the impacts of HB 69, whether or not projects fitting under the HB 69 criteria were routinely reviewed.

Comment: The DEIS states that changes to AS 46.40.094 will have a neutral effect, but the analysis is incomplete and based on incorrect assumptions. The discussions in Sections 5.2.1.3.4 and 7.3.1.4 do not include an adequate analysis of the potential effects of changes to the phasing statute. The DEIS implies that the previous statute only applied to oil and gas projects. While it is true that AS 46.40.094 was written to address phasing oil and gas lease sales, exploration and developing projects, the statute applied to all types of projects. The DEIS points out that federal CZMA regulations include phasing provisions for review of federal activities, but it omits the fact that this provision does not apply to federally-permitted activities. The changes to AS 46.40.094 may make it easier for applicants to phase projects by not choosing to complete a study. While phasing of some projects may be beneficial, phasing of large projects can be problematic. For instance, the project descriptions for the different phases of the Bedami and Alpine development projects on the North Slope were confusing, and it was not possible to determine precisely which activities were reviewed during each phase. The final EIS should include an analysis of the effects of the change to this statute.

Response: As explained in Section 7.3.1.4, phasing is simply an administrative tool whose use, in and of itself, should not affect the ability of the State to review a project in its entirety or restrict the ability of local districts or the public to comment on the entire project. While specific aspects of later phases may not be available at earlier phases, the totality of the project will be known and the State should be able to identify cumulative impacts from later phases. Similarly, districts and the public will also be able to comment on the totality of the project at later phases.

Comment: The final EIS should include an analysis of potential problems resulting from new time limits for ACMP reviews, especially for large projects reviews and OCS reviews. Situations where adequate project information is not available will put State agencies and coastal districts at a disadvantage.

Response: As noted in Section 7.3.1.8, the new consistency review time limits will require reviewers to be diligent, but this should not prove a substantial burden. Under federal consistency regulations, necessary data and information must be submitted before a consistency certification is considered complete and the review period begins. In addition, the State may also object to a certification due to insufficient information.

Comment: An expanded discussion in the final EIS should analyze the potential effects of coal bed methane projects, the environmental effects from excluding them from ACMP reviews, and whether they can be considered *de minimis*. In addition to removing shallow gas projects from ACMP reviews, HB 69 includes a provision for a variance from Alaska Oil and Gas Conservation Commission reviews, a waiver from local ordinance, and an exemption from ADEC approvals.

Response: OCRM believes the effects of these actions have been adequately analyzed in Section 7.6.

Analysis of DEC Carve Out

Comment: The EIS does not adequately analyze the effects of removing matters regulated by the DEC including: the fact that activities regulated by DEC will no longer be reviewed for consistency with other statewide standards and district policies; whether any single-agency reviews have been conducted since HB 191 (there may have been none); the lack of public notice or public comment opportunity for OCS reviews of air and water quality issues; the subsequent loss to the ACMP of traditional knowledge to subsistence and other coastal resources; and the confusion surrounding the scope of review when there is a 401 certification in a review.

Response: OCRM believes that Section 7.3.1.7 provides sufficient analysis of effects of the “DEC Carve-Out.”

Comment: The DEIS contains insufficient analysis of the impacts of changes to reviews of Outer Continental Shelf (OCS) activities, particularly with (1) respect to opportunity for districts and the public to comment on air and water quality concerns; and (2) how OCS activities are reviewed for consistency with the ACMP; (3) lack of district air or water quality policies; and (4) changes to statewide standards.

Response: OCRM believes that Sections 7.3.1.7 and 7.3.7.1.1 provide sufficient analysis and explanation on the DEC carve-out and OCS activities to determine that while the DEC carve-out is a change in the ACMP consistency process, it is not apparent that it will affect the operation of any of the ACMP policies or significantly affect the human environment.

Comment: The DEIS incorrectly states that reviews of OCS activities will require an EIS since an EIS has never been required for seismic surveys and other exploration activities in Alaska and there is no requirement for environmental assessments to be made available during ACMP review.

Response: As a matter of federal law, federal agency actions regarding OCS activities are subject to the requirements of NEPA and the CZMA. Whether a given OCS activity requires an EIS is an individual determination. In addition, all necessary data and information must be submitted for consistency review under the CZMA.

Analysis of Public Participation/Process

Comment: The DEIS needs to provide more or better analysis in a separate section of reduced opportunities leading to the cumulative loss for public and District participation through elimination of many projects from ACMP review (i.e., separating DEC review and inability to comment on projects inland of the coastal zone that have coastal effects, reducing local enforceable policies, expanding the ABC lists, removing provisions for citizens lawsuits, and providing minimum public noticing).

Response: OCRM believes the analysis of opportunities for participation is adequate. Where there have been changes to the public participation process, they are discussed within the appropriate section in the EIS, e.g., in the sections on phasing (7.3.1.4), exclusion of DEC permits and authorization (7.3.1.7), etc. In general, it is OCRM's finding that the public still retains the opportunity to comment on activities in and affecting resources of the Alaska coastal management area, as required under the CZMA.

Comment: The basis for the statement in the last sentence of 7.3.1.6, that "third parties with concerns about some projects would be able to seek redress through the State courts" needs to be supported, since it is understood that HB 86 eliminated this possibility."

Response: The statement has been corrected to read "*unable*." OCRM has made corrections to this section.

Comment: The DEIS does not provide an adequate examination into the effects of the removal of "review participant" status for Regional Citizen Advisory Councils as a result of the removal of ADEC from the ACMP consistency review process ("although this loss of review status has been mitigated by an agreement negotiated with ADEC to participate in permit reviews under ADEC's jurisdiction).

Response: OCRM did not provide for this level of impact analysis for any one type of group in Alaska in terms of changes to public participation.

Analysis of Revised Standards and Definitions

Comment: The DEIS does not provide an adequate examination into the effects of weakening the State ACMP standards, including all categories: natural hazards, habitats, mining, coastal access, energy facilities, utility routes and facilities, and subsistence.

Response: OCRM disagrees. Where we found that there may be some compromise in State standards, we analyzed the effects. OCRM believes that there may simply be disagreement over whether the standards have been "weakened."

Comment: The DEIS does not address the effects of changes to the statewide standards and definitions, but simply lists the changes, which is not sufficient as an analysis of the effects.

Response: In Section 5.2.2, OCRM provided a simple but specific explanation of the changes between the old and the new State standards, in response to requests from various interests. This was not intended to be read as the analysis portion of the EIS for the State's standards. OCRM provided its analysis of the effects of the changes to the statewide standards in Section 7.4.

Comment: The DEIS needs to contain more analysis of impacts to habitat protection; including the "high threshold" for assessing the effects of various actions allowing identification of important habitats only in cases where the habitat is deemed "biologically and significantly productive habitat;" the low number of cases that would result in such severe impacts on their own that the standard for "significant adverse effects" would apply; how districts can address impacts to sensitive resources if they are unable to apply the "avoid, minimize, or mitigate" sequencing process; the difficulty in establishing important habitat areas; the lack of State and federal regulations to cover gaps from loss of district policies and changes to the statewide standards (e.g., removal of upland habitat), etc.

Response: Please see Section 7.4.9 for a discussion on the effects of application of the "avoid, minimize, or mitigate" sequencing process. With respect to the other issues raised above, OCRM believes sufficient analysis has been provided in section 7.4.7.1 and 7.4.7.2 to compare the impacts of the various alternatives.

Comment: The discussion in the EIS on habitat issues does not sufficiently analyze the gaps in State and federal habitat laws, their limited application (i.e., only two very specific State statutes applied by the Office of Habitat Management and Permitting (OHMP) with no regulations with limited applicability to some streams), and the loss that district enforceable policies would likely result in negative environmental effects.

Response: Please see Section 7.4.7 for OCRM's discussion of State and federal habitat laws. OCRM takes into consideration State agency habitat activities beyond OHMP, as well as federal requirements, and believes a sufficient analysis of the programs has been conducted to reach a determination of potentially neutral effect. The finding does take into consideration how Alaska ultimately implements its proposed approach, and identifies potentially negative contributing factors such as the complex process for designating "important habitat" as well as the "district-by-district" approach that does not take into consideration the widely established and accepted ecosystem approach to habitat management.

Comment: The analysis should include the effects of new definitions such as "coastal waters," and "feasible and prudent." One environmental interest group specifically suggested that the ecological implications of the redefinition of coastal waters needed to be further analyzed because the new definition would restrict the review process and

reduce the probability that “important habitats” would be based on ecological connectivity.

Response: OCRM does not find that additional analysis beyond what has been provided in the EIS would result in any findings of new effects (see Section 7.4.2.1 for coastal waters, and Section 7.4.3.1.1 for feasible and prudent). The ACMP’s change to the definition of coastal waters meets approvability criteria under the CZMA. The changes do not preclude the designation of important habitat in upland areas, and the State’s definition of rivers, streams, and lakes are not limited to waterbodies having a direct and significant impact on coastal waters. Important habitats under the revised ACMP are to be managed for the special productivity of the habitat, which is one of a number of functional characteristics contributing to the ecological connectivity of an area.

Comment: The DEIS is deficient in failing to adequately analyze the effects of the designated area requirements. This is particularly true, in light of the OPMP’s recent decision that designations can be made “on-the-fly” during a project review.

Response: OCRM believes that it has adequately analyzed the effects of the designated area requirements under each of the affected standards, e.g., *see* Sections 7.4.1. (Natural Hazard Areas), 7.4.6 (Subsistence), 7.4.7 (Resources and Habitats), etc.

Comment: The discussion of the energy facilities standard does not consider whether there would be a significant impact because the ACMP no longer covers seismic surveys.

Response: There is nothing in the previous ACMP energy standard which specifically covers seismic surveys, nor does the revised ACMP energy standard specifically prohibit coverage of seismic surveys. If the concern is that seismic surveys will be covered by a DEC permit, then it should be noted that DEC air, land and water quality standards are considered the exclusive standards of the ACMP for the purposes and procedures and determinations of DEC to establish consistency.

Subsistence Analysis

Comment: While the DEIS concludes that the State’s revised standards will still ensure that districts and State agencies have the opportunity to recognize and assure subsistence usage of coastal areas and resources through the requirements for designation of subsistence areas, the analysis does not support this conclusion, nor does it recognize the high threshold by DNR for designating subsistence areas.

Response: OCRM stands by this statement, made in Section 7.4.6.1, and would point out that rather than being a conclusory statement, it is made at the end of the first paragraph of a section that then proceeds to describe that while and State (DNR) and districts “have the opportunity,” there are still many difficulties with the new standard that ultimately lead to the conclusion that Alternative 1 may result in negative impacts to subsistence resources.

Comment: OCRM's analysis of the new subsistence standard incorrectly characterizes the previous standard as requiring mitigation for impacts to subsistence resources. Furthermore, because there was no mitigation requirement under the previous subsistence standard, the lack of a mitigation requirement in the proposed standard is not a change and no negative impacts to subsistence uses are likely to result.

Response: On page 161 of the DEIS, OCRM agrees that the following statement, "One of the major issues identified in the scoping process is the new standard's requirements that projects designated in subsistence areas are required to "avoid or minimize impacts to subsistence uses of coastal resources," rather than provide mitigation for any damages that will occur as the result of a project being approved" can be interpreted to imply that Alaska's previous standards required mitigation. This is not the case, and the sentence has been revised. However, previously Districts programs could and did include mitigation policies (e.g., Haines, Hoonah, Sitka, etc.). Therefore, OCRM continues to assert that (1) since mitigation was a tool available and previously applied by the Districts under their District plans to protect subsistence resources; and (2) the availability of this tool has now been officially prohibited by the State, then the impact analysis will remain as stated in the DEIS.

Comment: It is "rank speculation" to think that a state-controlled program will lead to adverse effects for subsistence uses and resources, compared with a locally-controlled program.

Response: Please see Section 7.4.6.1. OCRM's determination of impacts to subsistence resources based on the changes to the district programs (more so than to the reliance on federal and State program which were offered as a mitigating factor) is based on the loss of the Districts' abilities to prioritize subsistence resources, difficulty in designating subsistence areas, submitting compatible plans, and no longer being able to apply mitigation as a negotiating technique with permit applicants.

Comment: While the DEIS acknowledges impacts to subsistence resources, this is not accurately reflected in the conclusion, where environmental and socio-economic impacts are listed as neutral.

Response: The conclusion section has been revised to so reflect the impacts to subsistence resources.

Comment: Further analysis (some based on Alaska Native consultation) is needed on the impacts the proposed changes will have to subsistence resources, tribal communities, their economies, traditional lifeways, local resources and opportunity for customary and traditional subsistence activity.

Response: Throughout the DEIS, including the extensive description of the affected environment, OCRM discusses the affected subsistence resources, tribal communities, their economies, traditional lifeways, and where possible, local resources. In addition, OCRM discusses the impacts of its approval of the ACMP amendment on subsistence

activities and resources. OCRM believes it has provided sufficient analysis of these impacts.

Comment: The analysis of subsistence laws is inadequate in explaining how other state and federal laws will fill the gaps or compensate for the “reduced level of identification, priority and protection” afforded subsistence resources under the current system; e.g., does not adequately disclose that State and federal laws do not adequately address subsistence, and that a more thorough analysis would reveal that federal laws only apply on federal lands; Board of Fisheries and Board of Game only manage the take of fish and game and address allocation issues; and the State Division of Subsistence has no regulatory power. The conclusion is that the loss of subsistence policies will “surely have an effect to both subsistence resources and subsistence uses.”

Response: OCRM’s conclusion is that loss of subsistence prioritization and the difficulty in designating subsistence areas under the new district plan guidance, along with other factors, will result in negative impacts to subsistence resources. The discussion regarding other federal and State laws and programs that may partially mitigate this loss was not intended to imply, nor does it state that these laws fill all the gaps identified by OCRM. OCRM does not feel that further analysis of these subsistence laws will provide additional or necessary “weight” to the finding.

Comment: OCRM should prepare and circulate a revised draft of the portion of the EIS addressing subsistence, habitat, and socioeconomic impact.

Response: OCRM will meet NEPA requirements by circulating a revised, final EIS for 30 days, during which additional comments may be submitted. References to revisions to the subsistence, habitat, and socioeconomic impact sections can be found in the related sections of this document.

Comment: The DEIS analysis does not take into account laws that protect off shore habitat and the continental shelf where bowhead whales migrate. Further, the DEIS does not mention the one law that seeks to protect the subsistence bowhead whale hunt—the MMPA—or its limitations.

Response: Section 7.4.6.1 of the EIS does not purport to contain an exhaustive list of all laws that address subsistence uses and habitat protection for subsistence resources in Alaska. Its intent was to demonstrate that there are other federal and State laws that take into consideration subsistence issues and needs, and that these will in part mitigate for any potential impacts from revisions to the ACMP. However, OCRM does appreciate the comment as it helps to underscore the point that additional subsistence laws do exist.

Comment: While the DEIS recognizes that negatives effects to subsistence may occur from the proposed changes, it makes no effort to document how or whether they would be significant.

Response: Section 8 of the EIS contains a discussion of the negative effects to subsistence focusing on the environmental justice issues associated with the revisions to the ACMP and the impacts on subsistence resources. These impacts have been determined by NOAA to be “disproportionately high adverse economic and social impacts on minority and low-income populations in Alaska in terms of Native Alaskan communities developing subsistence use policies and designating subsistence use areas.”

Comment: The DEIS should analyze potential impacts to subsistence from projects to be reviewed under the ACMP to provide for compliance with section 810 of ANILCA.

Response: As stated in the EIS, it is not within OCRM’s purview to surmise potential impacts of unknowable decisions on potential projects made by State and federal agencies at some point in the future. These would be tertiary impacts of OCRM’s decision, at best.

Comment: Sections of the final EIS should be rewritten to acknowledge the full effects of ACMP changes to subsistence. In order to do an adequate analysis, OCRM should read and analyze ADNRC comments on Public Review Drafts and do a more complete analysis of which enforceable policies are not adequately addressed by State or federal laws.

Response: Alaska has not yet submitted revised district programs to OCRM for review and comment as program changes to the ACMP. In addition, it is our understanding that the district plans are still in the process of being negotiated and structured. Therefore, OCRM does not feel it would be proper to base its analysis of the ACMP changes on incomplete program changes.

Comment: The DEIS incorrectly states that “State and district policies apply to federal actions located outside designated areas if the federal action will have an effect on subsistence uses regardless of the location of the federal action or where the effect to subsistence uses occur.” In spite of recent changes to the regulations, AS 46.40.096(k) and (l) do not allow any projects inland of the coastal zone be reviewed for consistency with the ACMP.

Response: OCRM respectfully disagrees that this is an incorrect statement. DNR has clearly stated in its program submittal (page 108): “In order to accommodate the CZMA “effects test” for federal consistency reviews, 11 AAC 110.015 was added to the ACMP regulations...This language addresses how the enforceable policies of a coastal district and the statewide standards are applied to activities. Activities that are subject to the federal consistency requirements (i.e., a federal agency activity or a listed federal license or permit activity) are subject to the State standards and applicable district enforceable policies if the project is within the coastal zone, or that activity is located outside the coastal zone but the impacts of that activity would affect the uses or resources within the coastal zone. This is [sic] federal ‘effects test’ is also applicable to activities that occur within a designated area, or that are located outside a designated area but the impacts of the activity would affect the uses or resources of the designated area.” Clearly these

changes allow for projects inland of the coastal zone to be reviewed for consistency with the ACMP, if the activity is subject to the federal consistency requirements and is located outside the coastal zone but the impacts would affect the uses or resources within the coastal zone.

Analysis of District Plan Guidance

Comment: The DEIS does not provide an adequate examination into the effects of the ability to establish coastal district enforceable policies, such as potential difficulties for applicants resulting from expanded Title 29 regulations.

Response: See Section 7.5.2.1 for a discussion of the effects of districts' ability to establish coastal district enforceable policies. OCRM believes this is an adequate analysis.

Comment: While the DEIS states that borough can use their Title 29 authorities to develop zoning and land use regulations, it does not acknowledge that coastal resource service areas do not have this option.

Response: The EIS has been revised at Section 7.5.1.1 to reflect this comment.

Comment: The DEIS should include an analysis of the local policies that would be lost and the foreseeable effects to resources, (e.g., habitat, subsistence) of these policy losses, including identifying what actions covered by these policies are or are not adequately addressed in existing state or federal law. In addition, there is no indication that OCRM reviewed comments on the public review drafts [of revised district plans] to determine what enforceable policies would no longer be approved.

Response: OCRM is unable to determine specifically which local policies will be lost and what, if any, impacts those losses might have on both the individual districts and the State resources as a whole. Districts are still in process of developing their revised plans and submitting them under the new regulations. Nor were the revised plans submitted as part of the program amendment by the State; therefore they are not ripe for review. OCRM anticipates that they will be submitted as program changes once the State has approved and adopted them, as required by CZMA regulation. However, in Section 7.5.2.1 of the DEIS, OCRM did analyze the foreseeable effects of the State's overall approach for reducing duplication between State and local coastal standards and policies. In addition, based on the State's revised guidance with respect to district policies being required to "flow from" State standards, OCRM's analysis of the State's revised standards represents its analysis of what actions covered by existing policies will or will not be adequately addressed in existing State or federal law.

Comment: The DEIS analysis should describe the district programs, Areas Which Merit Special Attention, and Special Area Management Plans that will likely sunset due to the ACMP amendments.

Response: The following sections provide the requested descriptions: districts programs—Section 7.5.2.1; Areas Which Merit Special Attention and Special Area Management Plans—Section 7.5.3.

Comment: The analysis should include how the effects of new concepts such as “flow from” and “adequately addressed,” and changes to “avoid, minimize, and [sic] mitigate,” and their interpretation by DNR will limit enforceable policies.

Response: OCRM has provided additional analysis regarding the effects of these new concepts and their interpretation by DNR as follows: Section 7.5.2 (“flow from” and “adequately addressed”) and Section 7.4.9 (“avoid, minimize, or mitigate”).

Alaska CMP State-Local Implementation Analysis

Comment: OCRM’s characterization of the change in program implementation from a State-and-locally implemented program to a primarily State-implemented program implies some sort of negative connotation to the change (various changes were recommended), and such characterizations should be revised. This was associated with OCRM’s effects analysis with included potential negative effectss associated with the shift in balance, (e.g., subsistence resources).

Response: OCRM disagrees that the EIS negatively characterizes the change in State implementation of the ACMP. OCRM’s description of the change itself is neutral, and OCRM clearly states that under the CZMA, Alaska has the option of choosing between various levels of State-only and state-local implementation of its coastal management program. However, under NEPA, it is OCRM’s responsibility to identify both the potentially positive, as well as adverse impacts to human environment associated with this change.

Comment: One interest group took issue with statements in Section 7.5 of the DEIS about ACMP administrative revisions that may significantly reduce district involvement in the ACMP. Instead, they believe that the districts simply have a different role than in the past; and it is a great deal more of a role than they would have under Alternatives 2 and 3.

Response: In Section 7.5, OCRM described the following reductions in local or district involvement in the ACMP: 1) dissolution of the CPC, which included nine elected local government officials; 2) the decision of six coastal districts to not update their district programs; and 3) a reduced role for local governments in review of permitted activities that involve local resources. The first two actions will unarguably reduce local government/district involvement in the ACMP; the first significantly since the CPC was responsible for adopting the ACMP regulations, supporting resolutions, participating and advising in the development of grant applications for federal funding to support the ACMP, reviewing and approving district programs, providing general leadership for the ACMP, serving as a forum for resolution of disputes that might arise between State agencies and local governments on local program implementation, and where possible,

playing a conflict resolution role in inter-agency conflicts. The third action is more controversial, however, it is OCRM's finding that with fewer district-level enforceable policies to apply, the State is anticipating District's will have a more limited role in project review.

Comment: The effects of consolidating the ACMP and Habitat Division into DNR, as well as the loss of the CPC's role and the concentration of power into DNR, are not adequately analyzed.

Response: See Section 7.5.1 for the discussion of effects of consolidation of the ACMP into the DNR and the loss of the CPC's role in the ACMP. OCRM believes that this analysis is sufficient to compare the impacts of the various alternatives.

Comment: If it reasonably foreseeable that with less State and local involvement in federal decisions (under Alternatives 2 and 3), then why is it not reasonably foreseeable that less local involvement in State decision-making would have a similar effect? The commenter implies that just as reduced local and State involvement in federal decisions results in foreseeable harm to the environment, so too does reduced local involvement in State and federal decisions, especially in a state as vast as Alaska.

Response: OCRM does not agree that the level of change in local involvement in the ACMP under the proposed changes to the ACMP is comparable to the loss of local and State participation in federal decisions under Alternatives 2 and 3. However, the DEIS analysis indicates where there may be "reasonably foreseeable" impacts to environmental and socio-economic resources based on the changes to local government participation in the ACMP.

Comment: The EIS analysis should take into consideration the size of Alaska and the comparably small size of State and local governments in attempting to administer a coastal program, and the impacts of shifting the "responsibility" of implementation of statewide standards. The burden on the small State staff in Juneau with less local knowledge would result in inappropriate and unnecessarily environmentally harmful development of Alaska's coastal zone due to less scrutiny.

Response: OCRM finds this comment to be speculative. The State may increase the size of its staff to address the additional workload, or based on the new efficiencies, be able to review more permits in less time.

Comment: The consolidation of authority for the entire CMP within one State office would increase the susceptibility of program decisions to political influence (either for or against development) and imbalance in the process.

Response: OCRM finds these types of comments to be speculative. There is no known study that supports a finding that consolidating authority in one state agency rather than in a series of local governments increases political influence or automatically creates imbalances in decision-making. OCRM has certainly not found this to be the case in the

variety of other single-agency, networked, and state-locally implemented coastal states it works with on a daily basis.

Specific Suggestions for Revisions to the EIS

Comment: OCRM should “tier off” the original 1979 FEIS on the Alaska Coastal Management Program.

Response: OCRM considered the issue of “tiering” off the original 1979 FEIS, however, decided that the amendment of the ACMP is a separate action, and that since the original FEIS is 26 years old, tiering would not be appropriate. CEQ recommends updating environmental impact statements every five years, which would make the information from the original ACMP FEIS considerably outdated.

Comment: The Wade Hampton Census Area and accompanying socioeconomic data is missing from the chart on page 110 of the DEIS.

Response: This information has been added to Table 1, Alaska Coastal Community Information.

Factual Inaccuracies within the EIS

Comment: An industry interest group raised two “significant” factual inaccuracies that they felt should be addressed within the EIS:

- 1) In Section 6.1.13.1, in the ninth paragraph, the DEIS states that a North Slope access road will be extended from Deadhorse to the village of Nuiqsut, crossing the Colville River, and costing \$150 million, including the Colville bridge at \$120 million. The road will permit test drilling to double over current rates. It is the group’s understanding that the road is no longer being pursued by the State of Alaska, and that based on the last design documents for it, the bridge would not be capable of supporting the weight requirements for drilling rigs in use on the North Slope. Therefore, the conclusion that the road will permit exploration drilling to double is unsubstantiated, and these facts should be revised in the FEIS.
- 2) In Section 6.1.13.3, paragraph 3, the group questions the DEIS statement that “Using ice to construct exploratory drill pads and roads, although less damaging than using gravel, can require up to 15 million gallons of water and can drain tundra ponds and streams.” In the group’s experience, exploration drilling operations can use more or less than 15 million gallons of water, depending on several factors. They cite typical requirements of about 1 million gallons of water to construct 1 mile of ice road, and various other examples and experiences to demonstrate the inaccuracy of the statement. They also contest the statement that the water use associated with exploration drilling operations can drain tundra ponds and streams. They state that a number of studies conducted over time

concerning water withdrawal from North Slope lakes have demonstrated that lakes used as water sources for exploration drilling operations (and other activities) recharge each year at breakup, etc.

Response:

- 1) OCRM's information source for the road and its ability to double test drilling over current rates is the *Alaska Economic Performance Report 2003*, page 17. However, based on the group's recommendation and a more recent information source, (<http://www.dot.state.ak.us/stwdplng/industrialroads/assets/IRP5-05.pdf>), we find that the Colville River Road, which was selected for design and construction in early 2004 was shut down in late 2004 due to changes in industry development schedules and patterns for the NPRA, as well as security reasons. Since the road is now no longer under consideration this information will be revised in the FEIS.
- 2) These are general statements taken from a Department of Interior document examining the impacts of Federal Programs in Western Alaska (<http://www.doi.gov/oepe/wetlands2/v2ch14.html>). OCRM agrees that there are certainly likely to be varying degrees of impacts from a variety of operations using ice to construct exploratory drill pads and roads, however, one company's experience's does not mean that OCRM has presented "factual errors." Therefore, OCRM will not be making any changes to Section 6.1.13.3, paragraph 3.

Comment: Section 5.2.3.1 should be reworded to state that the Alaska Department of Commerce, Community and Economic Development is responsible for community planning rather than ADNR.

Response: This revision has been made.

Environmental Justice Issues

Comment: EPA commended OCRM for holding scoping meetings in Barrow and Juneau during the EIS scoping process, however, was concerned that the DEIS did not discuss what was done to achieve meaningful involvement from low income and minority communities that will be disproportionately adversely impacted. EPA suggested that the EIS needs to demonstrate that communities bearing disproportionately adverse effects have had the opportunity to provide meaningful input into the decisions being made about the CMP amendment. In addition, they suggested that the EIS needs to describe what was done to inform the communities about the proposed action and the potential impacts it will have on their communities (e.g., notices, mailings, fact sheets, briefings, translations), what input was received from the communities, and how that input was utilized in the decisions that were made and described in the EIS.

Response: OCRM has provided this additional information in Section 8.3.

Comment: CEQ guidance on Environmental Justice and NEPA encourage agencies to develop public participation effects early in the process, including strategies that will involve low-income and minority populations in the EIS, and identifying mitigation measures to address environmental justice concerns. This guidance also includes a section on mitigation measures that should be solicited by the federal agency and incorporated into the EIS.

Response: OCRM believes it has complied with the requirements of EO 12898. OCRM identified coastal Native Alaskan and American Indian communities as minority and low-income populations that may be disproportionately affected by the proposed action, and considered the effects on these communities in the EIS. In addition, to ensure participation by affected groups, OCRM conducted a scoping meeting in Barrow and provided coastal tribal governments an opportunity to consult regarding the proposed amendment.

Comment: The environmental justice analysis does not accurately follow the 3-step process required by EO 12898: (1) identification of minority and low-income populations affected by the proposed action; (2) identification through the EIS impact analysis of those reasonably foreseeable adverse effects of the proposed action and alternatives that are high and adverse impacts; and (3) analysis and discussion of how and where the proposed action or its alternatives have high and adverse impacts that disproportionately impact the identified minority and low-income population. The analysis misapplies step one, skips step two, and as a result, in step three, discusses possible adverse impacts in a manner that has little or no relationship to the requirements of EO 12898. Finally, the inadequate analysis and discussion ultimately does not conclude that there will be disproportionately high and adverse impacts resulting to minority and low-income populations.

Response: OCRM disagrees, and believes that its environmental justice analysis, when taken into consideration with the description of the affected environment and the impact analysis, results in a balanced discussion of the environmental justice issues associated with the proposed federal action.

Comment: The findings in Section 8, that the ACMP changes are likely to have disproportionate economic and social impacts on minority and low-income populations was not accurately reflected in Section 10's conclusion of neutral socio-economic effects.

Response: Section 10 has been revised accordingly to reflect the findings in Section 8.

Comment: The EIS does not meet the requirements of EO 12898 in other ways, including: (1) describing the effects; (2) adequately collecting and analyzing data on subsistence instead of simply repeating information from studies completed by the State of Alaska; (3) using methods that identify areas of the State with Native populations that leave out consideration of Native villages located in a census area with an overall Native population that is less than the statewide average.

Response: Section 8.4 discusses the environmental justice effects of the preferred alternative, which meets the requirement of EO 12898. OCRM collected and analyzed data on subsistence, which is reflected throughout the description of the affected environment, as well as Section 8. Many sources were used to collect data and information, including federal and state studies and reports, academic studies, and specific studies conducted by various Native Alaskan interest groups (*See* bibliography). OCRM does not have the resources to conduct original data in Alaska's coastal areas, and instead relied on up-to-date and, given the sources, unbiased information. OCRM's method for consideration of population was based entirely on the coastal population, since this is the area impacted by the agency's action. Whether the method did or did not take into consideration Native villages located in a census area with an overall Native population that is less than the statewide average would not have affected the overall environmental justice determination, since this was for the entire state's coastal area, not for individual census areas.

Comment: The EIS lacks analysis of how approval of the ACMP changes will affect subsistence resources and subsistence use patterns. NOAA's proposed strategy to implement EO 12898 requires that NOAA conduct research activities on the effect of commercial fishing, habitat loss and pollution on subsistence activities. It requires a program that addresses habitat degradation and loss, contaminants effects nutrient over-enrichment and other stresses on ecosystems, and research on cumulative environmental exposure.

Response: OCRM believes that it has met the requirements for addressing EO 12898 as set out in NOAA's NEPA Administrative Order Series 216-6 7.02.

Comment: The final EIS should include an analysis of how the preferred alternative will meet requirements of EO 12898 and NOAA and CEQ guidance on this issue. It should include a detailed analysis of how the changes will affect minority and low income populations, identify mitigation measures that would reduce these effects, and suggest a monitoring program to determine how the changes affect these populations, especially with respect to subsistence resources and uses. In addition to environmental effects, the analysis should address human health, economic and social effects.

Response: Section 8 of the EIS provides the above-recommended analysis of how the changes will affect minority and low income populations, as well as an analysis of economic and social effects of the preferred alternative. The analysis did not conclude that there are any human health effects associated with the preferred alternative. The FEIS also includes a discussion on mitigation measures to reduce impacts associated with the preferred alternative (*see* Section 10.3).

Marine Mammal/Endangered Species Management

Comment: The DEIS states that consultation required for endangered species will be conducted after issuance of the DEIS, thereby making it meaningless, because OCRM

has already chosen an agency preferred alternative. Also, it is not clear whether this consultation has been initiated.

Response: Please see section 9.1 regarding compliance with the Endangered Species Act. While the FEIS has been updated to reflect the latest set of actions taken by OCRM to comply with ESA requirements, the DEIS did state that “OCRM has initiated discussion with the USFWS and NMFS to determine the extent of impacts that may be associated with approval of the proposed amendment to the ACMP.” With respect to choosing an agency preferred alternative in the DEIS, please see the 3rd comment on page 1 above under “Government-to-Government/Tribal Consultation” regarding the requirement for federal agencies to identify a preferred alternative as part of the DEIS.

Comment: The U.S. Department of the Interior made several specific requests for revisions to the text of the DEIS. These included:

1. Section 6.1.6, Marine Mammals. The discussion of the three marine mammal species (which include six stocks), which are trust resources managed by the U.S. Fish and Wildlife Service (FWS), needs to be expanded in the FEIS so it is consistent with the discussion of marine mammals (e.g., the status of each stock) that are trust species under the responsibility of the U.S. Department of Commerce, NOAA Fisheries. The expanded section needs to identify which stocks of which species are increasing, decreasing, or stable.
2. Section 6.1.6.1, Polar Bears. While the DEIS mentions some of FWS’s work with Russia with respect to cooperative management of polar bears, the FEIS needs to be revised to also include discussions of FWS’s long-standing work with Canada and with the U.S. Alaska Nanuuq Commission as well as with Canada’s First Nation peoples on managing subsistence use of the shared polar bear stock of the Beaufort Sea.
3. Section 6.1.6.2, Sea Otters. As written, the DEIS notes that sea otters have recently been designated a threatened species under the Endangered Species Act, implying that all sea otters in Alaska were included in that designation. The FEIS needs to be revised to specify that only the Southwest Alaska stock of northern sea otters was listed; the Southeast and Southcentral stocks were not.
4. Endangered Species Act. The FWS has reviewed the “Endangered Species Act—Section 7 Consultation Draft Biological Effects Evaluation (Evaluation)” submitted to Judy Jacobs at FWS via e-mail on October 7, 2005. While this Evaluation corrected inaccuracies with regard to endangered species effects described in the DEIS, relevant language in the FEIS needs to be revised to be consistent with the Evaluation.

Response: All of these changes have been made to the EIS as requested.

Comment: The U.S. Fish and Wildlife Service also commented that it is important to note that specific plans for all major projects affecting coastal areas in Alaska will still be required to undergo ESA Section 7 consultation review with FWS, due to Federal funding or permitting requirements. This will include, for example, projects under the jurisdiction of the U.S. Army Corps of Engineers, the U.S. EPA, and the Denali Commission.

Response: No response required.

Government-to-Government/Tribal Consultation

Comment: EPA commented that in the DEIS, OCRM states that they will establish a schedule to meet with Native Alaskan governments during the Fall of 2005, but that there is no description of the government-to-government consultation that was conducted during development of the Draft EIS. EPA corrected OCRM's reference to EO 13175 (OCRM has incorrectly cited EO 13084, which was revoked and replaced with EO 13175 in November of 2000). EPA recommended that the FEIS include a discussion of government-to-government consultation efforts and outcomes, and describe how results of the consultation efforts contributed to the EIS decisions.

Response: Some of the information is provided in responses to comments below (in this section). However, please also see revisions to Section 9.5, Executive Order 13175: Consultation and Coordination with Indian Tribal Governments of the FEIS for the addition of suggested information.

Comment: Various commenters stated that they were concerned with the "last minute efforts" to conduct government-to-government consultations, and that the efforts should have occurred earlier in the process and included a meaningful dialogue.

Response: OCRM contacted the Alaska Inter-Tribal Council (AITC) in July 2005 regarding holding Government-to-Government consultations on the DEIS. On October 20, 2005, individual notices on the public hearings and the availability of NOAA for a conference call on November 9, 2005 were sent to a mailing list provided by the AITC.

Comment: Tribes have not been provided adequate information about the effects of the changes.

Response: OCRM believes it has provided adequate information about the effects of the changes. Alaskan Native groups were provided with the same information as the rest of the public. Notices for public meetings and hearings stated that if anyone required special accommodations they should notify the hearing officer in advance of the meeting. No such requests were made.

Comment: NOAA issued the DEIS with an agency-preferred alternative before completing its government-to-government consultation; this has resulted in an

appearance that NOAA was holding its November 9 meeting to justify a decision that had already been made.

Response: According to CEQ's Forty Most Asked Questions Concerning CEQ's NEPA Regulations, Question 4(b), "Section 1502.14(e) of NEPA requires the section of the EIS on alternatives to "identify the agency's preferred alternative if one or more exists, in the draft statement, and identify such alternative in the final statement..." This means that if the agency has a preferred alternative at the Draft EIS stage, that alternative must be labeled or identified as such in the Draft EIS."

Comment: The proposed teleconference meeting with the tribes scheduled for November 9 is not sufficient to meet the requirements of EO 13175. A "meaningful" process would include education and outreach efforts to tribal Traditional and IRA Councils in coastal areas of the State, and possible translation of materials.

Response: OCRM believes it has complied with the requirements of EO 13175.

Cumulative Impacts Analysis

Comments: The EIS would benefit from a discrete discussion of cumulative impacts, including the changes on the day-to-day implementation of coastal zone management that would result from adopting the ACMP amendments. In a related comment, it was suggested that at a minimum, the DEIS must analyze cumulative and reasonably foreseeable direct and indirect effects, such as the effects likely to flow from the State's adoption of the NPDES program and the State's passage of new mixing zone and residue water quality standards.

Response: OCRM believes that cumulative impacts have been adequately considered in the Effects Analysis of the EIS. In addition, a new stand-alone section of the FEIS now clarifies that additional analysis of potential cumulative impacts is impracticable given the highly speculative nature of future discretionary actions (*See* section 7.7).

Comment: The final EIS should include an analysis of the cumulative effects of approving the ACMP to the overall goals of the CZMA.

Response: Since Alaska's proposed amendment has preliminarily been found to meet the requirements of the CZMA, OCRM does not believe there will be any "cumulative effects" of approving the ACMP to the overall goals of the CZMA.

Comments on NEPA Mitigation Requirements

Comment: EPA made two suggestions regarding mitigation requirements. First, EPA recommended that the cumulative impacts analysis include mitigation for any adverse effects attributable to cumulative impacts. Second, EPA suggested that the FEIS include a discussion of mitigation measures that will be implemented to avoid or minimize adverse impacts to subsistence users in affected communities.

Response: Please see Section 10.3. OCRM has provided this separate section on mitigation to address these comments.

CZMA Requirements

Comment: While the DEIS briefly addresses CZMA requirements in its description of Alternative 3, a substantive analysis of how the new program meets CZMA requirements must still be part of program approval.

Response: Once OCRM has finished the NEPA process, and if it reaches the final determination to approve the State's amendment, OCRM will issue final approval findings that will include an analysis of how the amendment meets the requirements of the CZMA.